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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 43

N. L. LINER, et al.,

Petitioners

Versus

JAFCO, INC., et al.,

Respondents

REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI

To the Court of Appeals of Tennessee,
Eastern Section

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Of Counsel

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SUPREME COURT OF THE UNITED STATES

October Term, 1962

N. L. LINER, et al., Petitioners,	)	
v.	)	Number 628
JAFCO, INC., et al., Respondents.	)	

Reply Brief to

PETITION FOR WRIT OF CERTIORARI

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Petitioners, certain labor organizations, seek to have the Court review and set aside certain rulings made by the courts of the State of Tennessee.

The Chancery Court of Hamilton County held, on two separate occasions, that picketing by the labor organizations should be enjoined.

In the first ruling, which was by Chancellor Garrett, the facts are reviewed and the Court made a specific finding that "there is no bona fide labor dispute between the parties in this litigation and that the existence of a labor dispute is a prerequisite, along with the involvement of interstate commerce, for the National Labor Relations Board before obtaining jurisdiction." (See page 33 of the Petition for Certiorari.)

The second occasion was when the case was finally decided by the lower court through the decision of Chancellor Glenn Woodlee. He agreed with Chancellor Garrett that "there was no labor dispute." (See page 38 of Petition for Certiorari.)

The third time that such a finding was made was by the Court of Appeals which unanimously sustained the rulings of the lower court and stated that "we concur with the Chancellor's finding that a bona fide labor

interested in trying to get a contract and was asked the following questions and gave the answers appearing thereto:

> "Q Was there any labor dispute of any kind in existence at that time between the Chattanooga Building Trades Council on the one hand or the unions connected with it and Jafco and Rea Construction Company, was there any labor dispute in existence between them?
>
> "A Directly, I guess not. I mean, I don't know of any particular item.
>
> "Q In other words, you had not been to them, the unions had not been to them to discuss any matters or ask them anything at all?
>
> "A Well, I couldn't say that the unions hadn't been. I have never talked to anybody either with Rea or with Jafco.
>
> "Q So far as you know, no union representative had ever talked to them about having contracts on this job?
>
> "A I don't know of it.
>
> "Q So far as you know, then, the Chattanooga Building Trades Council had never sought from these parties a contract, is that right?
>
> "A That's correct."

Yet the language on the sign carried by the picket clearly indicates that the union was directing the public's attention primarily to the fact that the employer was not under contract!

The union has gotten itself caught between the Scylla of trying to obtain a breach of contract for which they would be liable in damages -- and the Charybdis of

to have the Court review and set aside certain rulings made by the courts of the State of Tennessee.

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The third time that such a finding was made was by the Court of Appeals which unanimously sustained the rulings of the lower court and stated that "we concur with the Chancellor's finding that a bona fide labor dispute did not exist. Defendants never at any time sought to obtain a contract from the Rea Construction

Company which had a policy of employing union and non-union personnel without discrimination." (See page 24 of Petition for Certiorari.)

Yet the petition for certiorari is filled with references to the existence of an alleged labor dispute.

Petitioners insist that the Tennessee courts have no jurisdiction to enjoin picketing which they say "shows that the dispute and commerce involved were arguably within the meaning of the National Labor Relations Act."

Bearing in mind that the National Labor Relations Act defines a labor dispute as:

> "Any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relationship or employer and employee,"

what are the facts in this case?

* * * *

Jafco wished to build a shopping center in Cleveland, Tennessee, and made a contract with the Rea Construction Company to build it.

Rea Construction Company employs both union and

union personnel without discrimination." (See page 24 of Petition for Certiorari.)

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Rea Construction Company employs both union and non-union personnel.

While the initial earth-moving operation was

proceeding and a building site was being levelled, the defendants decided to take action and placed a picket on the job who bore a sign stating:

> "Rea Construction Company not under contract with Chattanooga Building Trades Council, AFL."

The picketing had the effect of shutting down the job.

An injunction was sought on the ground that the picketing appeared to be for the purpose of obtaining a breach of contract, which would be illegal under state law.

A preliminary injunction issued, and thereupon the defendants filed an answer asserting, among other things, that the state court had no jurisdiction since the sole jurisdiction lay with the National Labor Relations Board.

The defendant labor organizations asserted in their answer that the only purpose of the picketing was informational, and denied that they sought any breach of an existing contract.

A discovery deposition was taken from one C. Earle Williams, the present president of the Chattanooga Building Trades Council, and the person who was responsible

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A discovery deposition was taken from one C. Earle Williams, the present president of the Chattanooga Building Trades Council, and the person who was responsible for placing the picket.

He asserted that the labor organizations were not

interested in trying to get a contract and was asked the following questions and gave the answers appearing thereto:

"Q Was there any labor dispute of any kind in existence at that time between the Chattanooga Building Trades Council on the one hand or the unions connected with it and Jafco and Rea Construction Company, was there any labor dispute in existence between them?

"A Directly, I guess not. I mean, I don't know of any particular item.

"Q In other words, you had not been to them, the unions had not been to them to discuss any matters or ask them anything at all?

"A Well, I couldn't say that the unions hadn't been. I have never talked to anybody either with Rea or with Jafco.

"Q So far as you know, no union representative had ever talked to them about having contracts on this job?

"A I don't know of it.

"Q So far as you know, then, the Chattanooga Building Trades Council had never sought from these parties a contract, is that right?

"A That's correct."

Yet the language on the sign carried by the picket clearly indicates that the union was directing the public's attention primarily to the fact that the employer was not under contract!

The union has gotten itself caught between the

having no labor dispute at all, and, veering toward the latter, have run their case aground.

* * * * *

It is elementary that the word "controversy" means a dispute arising between two or more persons.

But there was no dispute here.

There was no effort made to obtain a contract and no purpose of trying to obtain a contract.

This being so, it cannot be argued by the unions that the case should have gone before the National Labor Relations Board instead of being tried by the state court.

This court and other courts have repeatedly recognized in recent years that Congress did not intend that every piece of litigation involving a labor organization would necessarily be pre-empted by the National Labor Relations Board.

Mr. Justice Frankfurter in the Garmon case quoted from the Anheuser-Busch case as follows:

> "State jurisdiction has prevailed in these situations because the compelling state interest in the scheme of our federalism, in the maintenance of domestic peace is not overriden in the absence of clearly expressed congressional direction."

And as recently as December 10, 1962, this court

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> "State jurisdiction has prevailed in these situations because the compelling state interest in the scheme of our federalism, in the maintenance of domestic peace is not overriden in the absence of clearly expressed congressional direction."

And as recently as December 10, 1962, this court reversed the ruling of lower courts which had held that there could be no jurisdiction of a state court because

of pre-emption doctrine. In the decision in the case of Smith vs. Evening News Assoc., Mr. Justice White stated that

> "The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by Section 301, but it is not exclusive and does not destroy the jurisdiction of the courts in suits under Section 301."

Other cases which in recent years have held that state court jurisdiction is not pre-empted where there is no labor dispute include the following:

Curry vs. Construction Laborers Union,
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Wilson-Jacobi, Inc. vs. Genuth,
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Wooten vs. Ohler,
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There are many more.

* * * *

It is interesting to note that the record indicates that the attorneys for the petitioner labor organizations went to the National Labor Relations Board with this case, seeking to know whether the Board had jurisdiction, and that the Board responded that they were unable to render any opinion on the matter because of the limited facts set forth.

Surely the National Labor Relations Board would

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It is interesting to note that the record indicates that the attorneys for the petitioner labor organizations went to the National Labor Relations Board with this case, seeking to know whether the Board had jurisdiction, and that the Board responded that they were unable to render any opinion on the matter because of the limited facts set forth.

Surely the National Labor Relations Board would have no jurisdiction over a matter of this sort in which

there is no claim made of an unfair labor practice and no proof whatsoever of a labor dispute.

Had the petitioners desired to create a dispute, it would have been very easy for them to do so.

However, in the absence of a dispute, we submit that the findings by the various lower courts which held that there was no dispute are valid and that the petition should be denied.

* * * *

We also would point out that this case has been moot for approximately a year and a half now.

Counsel for the petitioners represented to the Court of Appeals of Tennessee in the summer of 1961 that unless a decision were given within the next few weeks, the whole matter would be over and moot and there would be no further point in pursuing the case. (We do not know their exact language, but simply the general meaning thereof.)

In the light of the tremendous load of cases that is thrust upon this Court, it would seem undesirable to assume one in which

(a) The litigation between the parties has been rendered moot, and

(b) It is so clearly obvious that a correct conclusion was reached by the state courts.

Respectfully submitted,

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